

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

PP Docket No. 93-253

REPLY COMMENTS OF
IOWA NETWORK SERVICES, INC.

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November 30, 1993

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SUMMARY

Iowa Network Services, Inc. ("INS") hereby responds to those comments submitted in the FCC proceeding regarding competitive bidding for personal communications services ("PCS") licenses. INS supports those commenters who agree that the Commission should set aside spectrum limited to bidding by designated entities such as rural telephone companies and small businesses. INS also agrees with the comments of those who support financial incentives such as installment payment plans, royalty payments based on gross revenues from PCS and lower upfront payments for designated entities.

INS disagrees, however, with those who would limit rural telephone companies to bidding only for licenses which cover their own service areas and with those who would define rural telephone companies and small businesses too narrowly. INS also advocates the use of combinatorial bidding by designated entities, and agrees that a group of designated entities may form a consortium and not lose their status as designated entities.

Bidding should be structured so that bidding is performed state by state. The Commission should auction all of the channels in the most populous states in descending order of population size. This will allow smaller companies to obtain necessary information concerning the value of each market, and will also allow licensees to determine whether they have obtained enough spectrum covering sufficient population to merit additional bids in the same area.

INS requests that the Commission promulgate its final rules in this proceeding while keeping in mind the special concerns of rural telephone companies and small businesses.

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COMMENTS OF
IOWA NETWORK SERVICES, INC.

Iowa Network Services, Inc. ("INS"), by its attorneys and pursuant to Section 1.415(c) of the Commission's rules, respectfully submits this reply to comments filed on or about November 10, 1993, in response to the Notice of Proposed Rulemaking ("NPRM") released October 12, 1993, in the above-captioned proceeding.¹

I. INTRODUCTION

INS is an Iowa public utility providing centralized equal access, interexchange long distance telephone services, calling card service and enhanced voice messaging services. INS is owned by approximately 130 independent local exchange carriers, commonly referred to as participating telephone companies or PTCs. These PTCs are rural and small telephone companies. INS provides both interLATA and intraLATA equal access to the 276 PTC exchanges, which are located primarily in small towns and the more rural areas of Iowa. More than 150,000 rural subscribers are served by these

¹ Notice of Proposed Rulemaking, Implementation of Section 309(j) of the Communications Act Competitive Bidding, PP Docket No. 93-253, FCC 93-455, 8 FCC Rcd _____ (released October 12, 1993).

exchanges. They are among the few consumers in the entire country that presently have a choice of interexchange carriers to carry their "1+" intraLATA telephone calls, as well as their "1+" interLATA calls.

INS established its centralized equal access network in order to provide a choice of long distance services in small rural communities in Iowa. Prior to the implementation of centralized equal access, only AT&T offered "1+" interLATA toll service in the PTCs' exchanges; and no other interexchange carriers asked that the PTCs implement equal access.²

In its initial comments in this rulemaking proceeding, INS supported the Commission's proposed set aside of a certain amount of spectrum for designated entities such as small businesses and rural telephone companies. Contrary to the claims of some, the Commission has the legal authority to advance the interests of small businesses and rural telephone companies as a class. Congress intended these designated entities to participate in the provision of PCS, and only by ensuring that some of them receive licenses may this goal be achieved.

INS recommended that in defining what constitutes a rural or small telephone company, the Commission employ definitions particular to the telecommunications industry. The Commission's proposal to define rural telephone companies in terms of a cable programming rule excludes too many telephone companies that are rural service providers. A better definition is one that the

² Iowa Network Access Division, 3 FCC Rcd 1468 ¶ 3 (Common Carrier Bur. 1988).

Commission already has under consideration. Rural telephone companies are companies whose local exchanges serve places with populations of 10,000 or fewer persons. Likewise, small telephone companies should be defined under existing Commission rules as those with 50,000 or fewer access lines and annual operating revenues under \$40 million. Alternatively, the Small Business Administration definition of a small communications provider as one with under 1,500 employees is also reasonable.

INS also recommended that consortia composed wholly of rural telephone companies or small businesses be allowed to bid upon Channels C and D, and that they be permitted to aggregate the spectrum of the two channels. If small or rural telephone companies can bid as consortia they may be better able to attract capital. Small or rural telephone companies will increase their chances of operating a successful PCS business in the long run by pooling their limited resources to achieve the economies of scale necessary for success. Designated entities should be allowed to bid for geographic combinations as well. Businesses which are not designated entities should not be allowed to participate in bidding upon Channels C and D because Congress did not intend them to receive special consideration.

INS recommended that the Commission, when defining which businesses owned by women or members of minority groups are allowed to bid upon the set-aside channels, adhere to the language of the statute and accord preferences only to those where women or members of minority groups possess at least 50.1 percent equity ownership in an applicant. Anything less is not true ownership. It may

constitute some participation by members of these groups, but it is not actual ownership. In fact, if the Commission allows applicants which provide only some lesser degree of participation to women and minorities to bid on spectrum, it will lessen the chances of obtaining licenses for those applicants who are actually owned and controlled by members of these groups. Additionally, INS agrees with those comments which propose that minority or women owners also be required to have operational control over capital calls and capital expenditures.

After reviewing the comments of other parties to this proceeding, INS has the following response.

II. THE COMMISSION HAS THE LEGAL AUTHORITY TO DESIGNATE A SPECIFIC AMOUNT OF SPECTRUM FOR DESIGNATED ENTITIES

As INS pointed out in its initial comments, both the clear language of the statute and the legislative history show that Congress intended the Commission to ensure the participation of designated entities in the provision of PCS.³ Congress did not

³ INS will file a petition for reconsideration in Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, FCC 93-451, 8 FCC Rcd _____ (released October 22, 1993) ("PCS Order"), to ask that the Commission reallocate the spectrum as follows:

<u>Channel Block</u>	<u>Frequency (MHz)</u>	<u>Service Area</u>
A (30 MHz)	1850-1865/1930-1945	MTA
B (30 MHz)	1865-1880/1945-1960	BTA
C (10 MHz)	1880-1885/1960-1965	BTA
D (10 MHz)	1885-1890/1965-1970	BTA
E (10 MHz)	2130-2135/2180-2185	BTA
F (30 MHz)	2135-2150/2185-2200	MTA

Under this proposal, Channel B would be restricted to bidding by designated entities such as rural telephone companies and small businesses.

mean that designated entities merely have the opportunity to try, but that they actually participate. Those who argue that the Commission does not have authority to set aside spectrum as proposed in the NPRM are incorrect.

BellSouth Corporation, BellSouth Telecommunication, Inc., BellSouth Cellular Corp and Mobile Communications Corporation of America ("BellSouth") oppose the creation of set-aside channels for designated entities.⁴ BellSouth would prefer that the Commission accord designated entities special treatment in the form of installment payments, the use of credit facilities in meeting deposit and upfront payments, and other financial incentives.⁵

BellSouth argues that because Congress did not intend to dictate by statute that spectrum be set aside for designated entities that the Commission should therefore not do so.⁶ What this approach ignores is that although Congress decided against mandating that the Commission award licenses without competitive bidding to rural telephone companies alone, Congress did not prohibit the Commission from deciding which course best fulfilled the Congressional objective of disseminating licenses among a wide variety of applicants. Congress, in other words, decided to allow the Commission to apply its expertise and pursue the course it thought would best disseminate licenses among a wide variety of

⁴ Comments of BellSouth Corporation, BellSouth Telecommunication, Inc., BellSouth Cellular Corp and Mobile Communications Corporation of America, PP Docket No. 93-253, filed Nov. 10, 1993.

⁵ Comments of BellSouth at 19.

⁶ Comments of BellSouth at 18, 20-21.

applicants, including those designated by Congress: small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Indeed, review of the legislative history, upon which BellSouth so heavily leans, supports this construction rather than that advanced by BellSouth.

BellSouth relies mainly on a House Report to support its contention that the House "indicated a strong distaste for set-asides in any context."⁷ Inspection of the language in question shows nothing more significant than a Congressional refusal to dictate to the Commission on this question. "The Committee has never dictated -- by statute -- that the Commission issue specific licenses to specific individuals or companies...."⁸ This does not mean that the Commission cannot limit some bidding on licenses to certain classes of service providers such as small businesses or rural telephone companies. It only means that Congress would not force the outcome. Indeed, review of the Conference Agreement shows that it

also modifies the House provision to include a provision, based on but not identical to a Senate provision, that requires the Commission to ensure that small businesses, rural telephone companies, and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences and other procedures.⁹

⁷ Comments of BellSouth at 20.

⁸ Comments of BellSouth at 20 (citing H.R. Conf. Rep. No. 103-111, 103d Cong., 1st Sess. 257 (1993)).

⁹ H. R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess. (1993) (emphasis added).

The use of "other procedures" establishes that Congress meant the Commission to determine which procedures to employ. Congress intended the Commission to decide.

Although BellSouth may be correct regarding the legality of a set-aside on the basis of race or gender,¹⁰ its arguments concerning minorities and women do not apply to rural telephone companies and small businesses.¹¹ The arguments of Sprint Corporation ("Sprint") along these same lines are equally inapplicable.¹² Classifications that do not apply to a suspect class or infringe upon fundamental constitutional rights "must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."¹³ Small businesses and rural telephone companies do not belong to a suspect class. Unlike the justifications required for race and gender distinctions, there

¹⁰ See Comments of BellSouth at 21 n. 31.

¹¹ If the Commission insists on establishing race and gender set-asides, INS agrees with those parties who would limit preferences to businesses owned by women or minorities where the designated entities have an equity share of at least 50.1% and operational control. INS urges the Commission to adopt, in addition to the equity requirement, the proposal put forward by the Small Business Administration ("SBA"). The SBA proposed that the designated entity's operational control extend to decisions concerning capital expenditures. Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Notice of Proposed Rulemaking at 16, PP Docket No. 93-253, filed Nov. 10, 1993.

¹² Comments of Sprint Corporation at 11, PP Docket No. 93-253, filed Nov. 10, 1993.

¹³ Federal Communications Commission v. Beach Communications, Inc., 113 S. Ct. 2096, 2101 (1993).

need be no legislative record justifying economic classifications.¹⁴ The Commission is free under both the statute and the Constitution to set aside spectrum for rural telephone companies and small businesses.

BellSouth's constitutional arguments do raise the concern that if the Commission does not carefully define which minority and women owned businesses are eligible to bid upon the set-aside channels, their unlimited inclusion will jeopardize the set-aside channels. Racial set-asides, for example, must be designed not as ends in themselves, but as a means of achieving an important but limited governmental objective.¹⁵ Similarly, preferences based on gender must substantially advance important governmental objectives.¹⁶ Accordingly, if the Commission determines that the governmental objective is economic opportunity, it should not take the questionable step of providing additional opportunity to those who are already successful.

Cox Enterprises, for example, is a woman-owned business which would probably be able to outbid any number of rural telephone companies or small businesses combined.¹⁷ Cox Enterprises is in no need of special preferences due to lack of economic opportunity. The Commission should narrowly tailor its definition of those

¹⁴ Id. at 2102; Nordlinger v. Hahn, 112 S. Ct. 2326, 2334 (1992).

¹⁵ Metro Broadcasting, Inc. v. FCC, 110 S. Ct. 2997, 3025 (1990).

¹⁶ Lamprecht v. Federal Communications Commission, 958 F.2d 382 (D.C. Cir. 1992).

¹⁷ See "Georgia Trend 100," Georgia Trend (Jan. 1992) ("Anne Cox Chambers and her sister, Barbara Cox Anthony, together own 98% of Cox Enterprises, a share worth an estimated \$4 billion.")

eligible for bidding on set-aside channels, when race and gender are the criteria, to those in need of economic opportunity. To that end, INS proposes that the Commission also require minority and women owned businesses to meet the Commission's small business eligibility requirements for the set-aside channels.

BellSouth also attempts more pragmatic arguments against a set-aside channel. BellSouth maintains that the set-aside blocks "are smaller, in less desirable portions of the band, and limited in market size to BTAs."¹⁸ Although this is all true, it provides no rationale for making the situation worse. BellSouth's notion that financial incentives could substitute for spectrum ignores an important Congressional goal. Congress did not just want to make sure that a wide variety of applicants bid upon spectrum, but that the Commission disseminate licenses to a wide variety of applicants, including rural telephone companies and small businesses, so that they may participate in providing PCS.¹⁹ BellSouth would be content if designated entities showed up for the auctions. Congress, however, intended designated entities to provide service.

BellSouth argues that the manufacturing community will have less incentive to respond to the requirements of set-aside spectrum blocks.²⁰ Why this should be the case, BellSouth does not say. If manufacturers are slow in responding to service providers with between 20 and 30 MHz of spectrum, then by that same logic they

¹⁸ Comments of BellSouth at 22.

¹⁹ See infra n. 9.

²⁰ Comments of BellSouth at 22.

will have nothing to do with the licensees of a mere 10 MHz. In light of the numerous 10 MHz channels created by the PCS Order, it does not appear that manufacturers are likely to ignore the designated entities.

Sprint speculates that rural telephone companies will outbid the other designated entities.²¹ Sprint maintains that because rural telephone companies have a cash flow and access to capital that they will outbid companies headed by women and minorities.²² This ignores the fact that there are no size limits on businesses owned by women and minorities, which means that businesses with more assets than rural telephone companies will be able to outbid them. The diversity inherent in the group of designated entities means that rural telephone companies may find themselves bidding against much larger companies.

BellSouth and Sprint both express concern that speculation in the after market will lead to those other than designated entities holding the licenses.²³ The Commission's proposed rules against trafficking and warehousing will prove a successful guard against such occurrences. Sprint itself recognizes the efficacy of safeguards.²⁴

Accordingly, because economic classifications such as those contemplated in the NPRM on behalf of rural and small telephone

²¹ Comments of Sprint Corporation at 9, PP Docket No. 93-253, filed Nov. 10, 1993.

²² Id.

²³ Comments of BellSouth at 23; Comments of Sprint at 12.

²⁴ See Comments of Sprint at 12-15.

companies are lawful and permitted under the statute, and because they will ensure participation by designated entities in the provision of PCS, INS requests that the Commission abide by its original intent to set spectrum aside.

III. RURAL AND SMALL TELEPHONE COMPANIES SHOULD BE ACCURATELY
DEFINED AND NO MORE LIMITED IN ANY PREFERENCES AWARDED
THAN ANY OTHER DESIGNATED ENTITIES

A. Rural Telephone Companies Must be Accurately
Defined

In its initial comments, INS proposed that rural telephone companies be defined as those whose local exchanges serve places of 10,000 or fewer persons. Numerous commenters support this same proposal,²⁵ and some even suggest higher numbers.²⁶ INS agrees with the 10,000 person threshold and agrees that sound arguments have been presented by these other parties.

One commenter, however, supported the initial proposal to define a rural telephone company as one whose service area contains

²⁵ See, e.g., Comments of the National Telephone Cooperative Association ("NTCA") at 7, PP Docket No. 93-253, filed Nov. 10, 1993 (proposing a limit of 10,000 access lines or a 10,000 person population limit); Comments of the Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO") at 3, 5-6, PP Docket No. 93-253, filed Nov. 10, 1993; Joint Comments of Rocky Mountain Telecommunications Association and Western Rural Telephone Association at 20, PP Docket No. 23-253, filed Nov. 10, 1993 (defining a rural area, in part, as one with fewer than 10,000 persons); Comments of McCaw Cellular Communications, Inc. ("McCaw") at 19-20, PP Docket No. 93-253, filed Nov. 10, 1993.

²⁶ See, e.g., Comments of the Chief Counsel for Advocacy of the United States Small Business Administration on the Notice of Proposed Rulemaking at i, 13-14, PP Docket No. 93-253, filed Nov. 10, 1993 (proposing a 10,000 to 50,000 access line limit); Comments of CFW Communications Company at 1, PP Docket No. 93-253, filed Nov. 10, 1993 (proposing a definition of fewer than 50,000 access lines); Joint Comments of Rocky Mountain Telecommunications Association and Western Rural Telephone Association at 19 (proposing a limit of 20,000 or fewer access lines).

no incorporated or unincorporated place of 2,500 persons or more.²⁷ For the same reasons that INS opposed this limit in its comments, it opposes such a narrow construction.²⁸ This limit was devised in the context of finding telephone companies small enough to merit an exemption to the general prohibition on providing cable programming. Even in that context, the Commission has proposed to expand the limit to 10,000 persons. Finally, a 2,500 person threshold does not realistically reflect the rural status of INS' participating telephone companies, which are widely recognized as rural.

McCaw Cellular Communications, Inc. ("McCaw") warned that the Commission should make sure that the Regional Bell Operating Companies not be considered designated entities merely because they provide some service in rural areas.²⁹ Although INS agrees with this general proposition, INS is concerned that McCaw's proposed solution is too restrictive. McCaw suggested that to be considered a rural telephone company the designated entity applicant must show that in combination with its parent companies and subsidiaries it provides service to less than 150,000 access lines as of the date of the bid.³⁰ This definition comes very close to foreclosing INS. INS is a company whose parent companies are rural telephone companies. Although they each own a small part of INS, there are

²⁷ AT&T's Comments at 26 n. 31, PP Docket No. 93-253, filed Nov. 10, 1993.

²⁸ See also Comments of the United States Telephone Association ("USTA") at 3, PP Docket No. 23-253, filed Nov. 10, 1993.

²⁹ Comments of McCaw at 20.

³⁰ Comments of McCaw at 20.

over 130 of them, and, as a result, they have in the aggregate more than 150,000 access lines. This does not turn them into urban telephone companies.³¹

B. Rural Telephone Companies Should be Allowed to Bid on Set-Aside Channels Outside Their Own Service Areas

In order to allow consortium bidding in the set-aside channels, the Commission should allow rural telephone companies to bid for licenses outside their service areas. This would avoid the administrative delays and inconvenience of trying to match BTAs and telephone service areas when the fact of the matter is that BTAs and telephone service areas do not have the same boundaries. Other commenters agree.³²

Various commenters hope that the Commission will limit rural telephone companies to their own service areas. AT&T mentioned without discussion that rural telephone companies should not receive preferences for any license that does not include a portion of the telephone company's own service area.³³ NTCA suggests that limiting rural telephone companies to the BTAs encompassing their own service areas in the set-aside spectrum would cause dispersal among geographic areas.³⁴ According to the SBA, a rural telephone company loses its rural status if it bids for a license to serve the more populated communities adjacent to its rural

³¹ For purposes of combinatorial bidding, INS has already requested in its initial comments that the Commission not aggregate the statistics of each of INS' participating telephone companies.

³² See, e.g., Comments of OPASTCO at 6-7.

³³ AT&T's Comments at 26 n. 31. Cf. Comments of BellSouth at 28.

³⁴ Comments of NTCA at 8.

service area.³⁵ The SBA claims that the rationale for providing special treatment to rural telephone companies is only to ensure the rapid deployment of PCS in rural service areas.³⁶ Allowing rural telephone companies the same latitude as other designated entities would not undercut this goal. Rural telephone companies have every incentive to make sure that they provide PCS to their customers. Additionally, they will be better able to provide PCS to rural areas at lower prices if they can also serve more populated areas.

Another reason to provide the same preferences to rural telephone companies as to other designated entities is because they, like small businesses, do not have access to the kind of capital that large carriers have. Indeed, if a rural telephone company is able to bid on any BTA within the set-aside channels, it becomes more attractive to investors and is likely to be able to build a system with the economies of scale that come with greater size. This will increase the chances that not only does the rural telephone company build a PCS system but that it turns out to be financially successful and stays in operation.

A service area limitation would thwart the ability of the INS companies to enter into a bidding consortia for BTAs. Some local exchange companies in Iowa have service territories in as many as three BTAs. If one such Iowa local exchange carrier were to bid with another Iowa local exchange carrier on a BTA in which they both had customers, the service area limitation would not be a

³⁵ Comments of SBA at 15.

³⁶ Id.

concern. But if the second local exchange carrier's service area extended into a BTA which it did not share with the first local exchange carrier, the two of them could not bid together on that BTA. Such an unwarranted limitation could render it financially impossible for the rural telephone companies to bid on the BTAs where their local exchanges are located.

A service area limitation would be inequitable. The Commission has not proposed that small businesses be limited in their bidding only to the BTA housing the headquarters of the small business. Nor has it articulated a reason for distinguishing between the two. Most rural telephone companies also meet the Commission's definition of a small telephone company or the SBA definition of a small business. If a rural telephone company is also a small business it should certainly be allowed to bid on licenses covering territories outside its own service area.³⁷

Concern has been expressed that a handful of rural telephone companies are owned by some of the largest telephone companies in the country.³⁸ This same argument could, however, be levelled at companies owned by women or minorities. Some of those companies have proven very successful and will probably be able to outbid numerous small companies, including small businesses owned by women or minorities. If size is a concern, it should apply to all

³⁷ Indeed, in the event the Commission adopts the service area limit, the Commission must either clarify that the limit does not apply to those rural telephone companies which are also small businesses, or limit bidding by other small businesses and businesses owned by women and minorities to license areas where their headquarters or principal places of business are located.

³⁸ Comments of American Personal Communications ("APC") at 7 n.12, PP Docket No. 23-253, filed Nov. 10, 1993.

designated entities. INS asks that the Commission not devise a rule intended to limit large companies that punishes small rural telephone companies at the same time.

C. Small Telephone Companies Have Fewer than
50,000 Access Lines and Less than \$40 Million
in Revenue

INS recommended in its comments that the Commission adopt an existing definition of a small telephone company that would more accurately reflect the telecommunications industry than the proposed SBA definition. The Commission defines small telephone companies for purposes of filing tariffs as any local exchange carrier with annual revenues from regulated telecommunications operations of less than \$40 million, and 50,000 or fewer access lines.³⁹ Most of INS' PTCs meet this definition.

The SBA itself agreed that the Commission's tentatively proposed reliance on the SBA definition was not adequate in the context of PCS.⁴⁰ Noting the definition of a Tier 3 local exchange carrier, SBA recommended a revenue standard of \$40 million. INS' only comment on the loosening of its own proposed standard (which included a 50,000 access line limit), is that the revenues consist of, as they do under current rules, annual revenues from regulated telecommunications operations.

³⁹ 47 C.F.R. §§ 61.39(a), 69.602(a)(3).

⁴⁰ Comments of SBA at 8-9.

IV. BIDDING METHODS SHOULD NOT FORECLOSE POSSIBILITIES FOR
RURAL AND SMALL TELEPHONE COMPANIES TO AGGREGATE THEIR
BIDS AND TO BID ON THE BASIS OF FULL INFORMATION

A. Designated Entities Should be Allowed to
Submit Combinatorial Bids and to Act in
Consortia

INS believes that designated entities should be allowed to submit combinatorial bids. Others agree.⁴¹ Some commenters oppose the implementation of combinatorial bidding to bid for all MTAs in the nation.⁴² Others oppose the use of any combinatorial bidding at all.⁴³

The argument that combinatorial bidding would undercut the Congressional goal of licensing a wide variety of service providers⁴⁴ is inapposite in the context of the set-aside spectrum. A wide variety of applicants will be participating in the bidding on the set-aside channels. If combinatorial bidding by designated entities enables them to pool their limited financial resources, then the goal of diversity is not thwarted.

Nor is it a concern that the Commission might have to define the combination for which applicants will bid.⁴⁵ The Commission defines boundaries all the time. Administrative difficulties may be kept to a minimum if the Commission defines the boundaries

⁴¹ See, e.g., Comments of Calcell Wireless, Inc. at 16, PP Docket No. 93-253, filed Nov. 10, 1993.

⁴² See, e.g., AT&T's Comments at 4-8; Initial Comments of Southwestern Bell Corporation ("Southwestern Bell") at 22-25, PP Docket No. 93-253, filed Nov. 10, 1993.

⁴³ See, e.g., Comments of BellSouth at 6.

⁴⁴ See, e.g., Comments of BellSouth at 8.

⁴⁵ See Comments of BellSouth at 10.

beforehand. Regional bidding has supporters.⁴⁶ Some suggest that combinatorial bidding be allowed on all BTAs within an MTA.⁴⁷ Even if the Commission does not establish specific boundaries for combination bids, comparisons of different size aggregations may still be made. Moreover, the Commission could, as suggested by Nextel, allow the market to determine the combinations.⁴⁸

Finally, as persuasively described by the SBA, consortia and combinatorial bidding will benefit designated entities.⁴⁹ If designated entities intend to bid on more than one BTA or more than one channel block, they may band together to attract capital and obtain economies of scale. Some designated entities may need to form consortia to bid on a single BTA. The SBA's proposal comports with that in INS' comments. The Commission should deem any consortium consisting entirely of small businesses eligible for any preferences even if the combined attributes of the consortium exceed the limits of small business eligibility.⁵⁰ INS believes

⁴⁶ See e.g., Comments of Ameritech at 4, PP Docket No. 93-253, filed Nov. 10, 1993; Comments of GTE at 7 n. 16, PP Docket No. 23-253, filed Nov. 10, 1993.

⁴⁷ See, e.g., Comments of APC at 2-3; Comments of Rochester Telephone Corporation at 10, PP Docket No. 23-253, filed Nov. 10, 1993.

⁴⁸ Comments of Nextel Communications, Inc. ("Nextel") at 10, PP Docket No. 93-253, filed Nov. 10, 1993; see also Comments of Ameritech at 4-5.

⁴⁹ Comments of SBA at 11-12.

⁵⁰ Comments of SBA at 11-12.

that this reasoning should apply to any designated entity, not just small businesses.⁵¹

B. The Commission Should Structure the Bidding Sequence so that Applicants Bid upon the Smaller and Smallest Markets Last

INS agrees in part with the Commission's plan to auction the largest spectrum licenses first, in order of population. After reviewing comments on this question, INS is of the opinion that the Commission should conduct its auctions state by state, starting with the most populous, and auction all the spectrum blocks for that state, starting with the largest. Other commenting parties agree with the basic principle of auctioning all channels within a market before auctioning the next market.⁵² Not only would this allow licensees to determine where they are able to establish hubs, but it will provide information to smaller applicants concerning the values placed upon various markets. Larger carriers have the resources, and some have the cellular experience, necessary to determine the value of any given market. Not all smaller carriers have these advantages and they cannot afford to overvalue their bids.

⁵¹ Moreover, upon further reflection, INS admits that designated entity consortia need not be wholly composed of designated entities. So long as consortia are majority-owned and controlled by designated entities, they should not lose their designated entity status merely because they obtain capital financing from entities which are not designated entities.

⁵² Comments of APC at 5.

Several commenting parties agreed with the Commission's proposal to sequence bids by population.⁵³ AT&T saw the advantages of establishing hubs.⁵⁴ The SBA recommended that the Commission hold any auction reserved for designated entities last.⁵⁵ As the SBA pointed out, applicants "will need time to study the market, obtain financing, and if necessary, develop joint ventures. For designated entities, most of which have relatively small staffs, performance of these tasks in an expedited timeframe may be impossible."⁵⁶ A delay for designated entities would allow more bid preparation time and give designated entities a better sense of the market.⁵⁷

Others want bidding on the smallest market first.⁵⁸ And some propose bidding on all licenses in a geographic area at the same time.⁵⁹ Neither of these approaches would allow smaller applicants to learn from earlier bids.

⁵³ See, e.g., Initial Comments of Unique Communications Concepts at 7, PP Docket No. 93-253, filed Nov. 10, 1993; Comments of Nextel at 7-8 (although advocating that BTAs be auctioned before MTAs, recommending that the licenses for the largest markets be offered first).

⁵⁴ AT&T's Comments at 9.

⁵⁵ Comments of SBA at 40.

⁵⁶ Id.

⁵⁷ Id.

⁵⁸ See, e.g., Comments of MCI Telecommunications Corp. at 10, PP Docket No. 93-253, filed Nov. 10, 1993.

⁵⁹ See, e.g., Comments of BellSouth at 12-14.

C. The Commission Should Deny Requests to Differentiate Between Designated Entities in Setting Aside Spectrum

Some commenters have suggested delegating rural telephone companies to less advantageous spectrum.⁶⁰ Proposals range from limiting rural telephone companies to 10 MHz at Channel D⁶¹, to enlarging Channel C and moving rural telephone companies to a 20 MHz Channel D⁶², to a 20 MHz Channel C for minorities only.⁶³

The rationale for these proposals is that rural telephone companies are big business.⁶⁴ INS has not found that to be the case. It has also been suggested that rural telephone companies have access to capital by virtue of their monopoly positions.⁶⁵ Rural telephone companies would not, however, be offering PCS as a monopolist and would thus not be attracting capital for a monopoly service. The Commission's current proposal contemplates seven different licensees in any given geographic area, which means that capital may be primarily available to only very large service providers. Rather than placing rural telephone companies in a ghetto, the Commission should treat them on an equal basis with other entities designated by Congress for preferential treatment.

⁶⁰ See, e.g., Comments of Calcell at 22; Comments of the Minority PCS Coalition at 8, PP Docket No. 93-253, filed Nov. 10, 1993.

⁶¹ Comments of Calcell at 22.

⁶² Comments of Unique Communications Concepts at 5, PP Docket No. 93-253, filed Nov. 10, 1993.

⁶³ Comments of the Minority PCS Coalition at 7-8, PP Docket No. 93-253, filed Nov. 10, 1993.

⁶⁴ Comments of Calcell at 22.

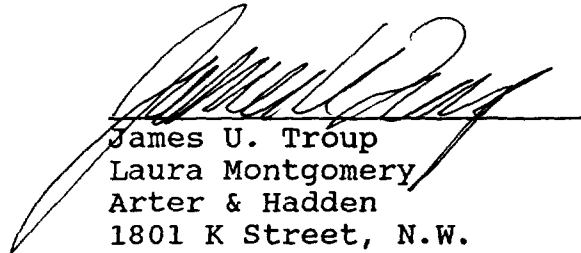
⁶⁵ Comments of Calcell at 21.

V. CONCLUSION

For these reasons, Iowa Network Services, Inc. respectfully requests that the Commission set aside spectrum blocks for all lawful designated entities as described in these reply comments.

Respectfully submitted,

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